

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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TIMOTHY KIRBY,

Plaintiff,

9:05-CV-1527  
(TJM)(GJD)

v.

RICHARD LAUX, Physician's Assistant, *et al.*,

Defendants.

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**APPEARANCES:**

**OF COUNSEL:**

TIMOTHY KIRBY  
Plaintiff, *pro se*  
86-A-6806

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ED J. THOMPSON, Esq.

GUSTAVE J. DIBIANCO, U.S. MAGISTRATE JUDGE

**ORDER**

Presently before the Court is a Motion to Compel Discovery filed by Timothy Kirby ("Kirby" or "Plaintiff") pursuant to Fed.R.Civ.Proc. 37. Docket No. 33.

In his Motion to Compel, Kirby seeks an Order from this Court directing the Defendants to respond to Plaintiff's First Requests for Production of Documents that were served on the Defendants on January 24, 2007. *Id.*

On March 22, 2007, Defendants' counsel filed a letter stating that Defendants' served their response to the outstanding discovery request on March 20, 2007.<sup>1</sup>

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<sup>1</sup> Defendants' counsel did not make any requests to the Court for an extension of the time to respond to Plaintiff's discovery demands, nor has counsel indicated that he rejected the demands as untimely under the pending Scheduling Order.

Defendants' counsel did not provide the Court with a copy of Defendants' response. Docket No. 35.

Since March 22, 2007, the Plaintiff has not indicated to the Court that he believes such responses fail to fully respond to his discovery requests. Therefore, Plaintiff's Motion to Compel responses to his First Requests for Production of Documents must be denied as moot. *See, e.g., Johnson v. Schmidt*, 1992 U.S. Dist. LEXIS 8342, \*1 (E.D.N.Y. 1992) (denying Motion to Compel filed by inmate where Defendants had already responded to Interrogatories and Requests for Production).

Finally, the Court notes that there are two Defendants who have been served, but have yet to file an Answer. Accordingly, the Court will re-set the pretrial deadlines to permit a short period of discovery with respect to the claims in this action.

WHEREFORE, based upon the above, it is hereby

ORDERED, that Plaintiff's Motion to Compel (Docket No. 33) is denied as moot, and it is further

ORDERED, that the discovery deadline is re-set to **August 3, 2007**, the motion to compel deadline is re-set to **August 31, 2007**, and the dispositive motion filing deadline is re-set to **November 2, 2007**, and it is further

ORDERED, that the Clerk serve a copy of this Order on the parties in accordance with the Local Rules.

DATED: May 9, 2007

  
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Hon. Gustave J. DiBianco  
U.S. Magistrate Judge